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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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5 SMITHKLINE BEECHAM CORPORATION,
6 d/b/a GLAXOSMITHKLINE,

No. C 07-5702 CW

7 Plaintiff,

ORDER ON
OBJECTIONS TO JURY
INSTRUCTIONS AND
VERDICT FORM

8 v.

9 ABBOTT LABORATORIES,

(Docket Nos. 616
and 618)

10 Defendant.
11 _____ /
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13 On January 23, 2015, the Court issued an order with appended
14 jury instructions and verdict form and permitted the parties to
15 file objections thereto. Docket No. 614. Defendant Abbott filed
16 three objections. Docket No. 616. Plaintiff GlaxoSmithKline
17 (GSK) filed a response. Docket No. 618. Having considered the
18 arguments of counsel, the Court now resolves each objection in
turn.

19 Abbott's first objection involves the deletion of references
20 to proximate cause from the proposed verdict form and final jury
21 instructions for the state law causes of action. In response, GSK
22 states that it does not oppose reinserting those references to the
23 extent that the language tracks that of the 2011 instructions and
24 verdict form. Because GSK does not object to the reinsertion of
25 the references to proximate cause, the Court will amend the
26 verdict form and jury instructions accordingly.

1 Abbott's second objection relates to the Court's instructions
2 and verdict form question regarding part two of the unfair and
3 deceptive trade practices claim. Question C.1.b of the verdict
4 form asks whether "Abbott inequitably asserted its power over
5 Norvir by increasing Norvir's price by 400 percent to undermine
6 competition faced by Kaletra from other drugs, including GSK's
7 Lexiva." Abbott argues that this language permits the jury to
8 find that Abbott engaged in unfair and deceptive trade practices
9 if it finds that Abbott unfairly exercised monopoly power to
10 undermine competition in the marketplace, regardless of whether
11 Abbott specifically targeted Lexiva. GSK responds that the
12 current language is accurate and permits the jury to find for GSK
13 if it finds that Abbott targeted both Lexiva and Reyataz. This
14 was a topic of the discussion at the January 7, 2015 pretrial
15 conference and the Court held that the instructions and verdict
16 form need not mention other competitors' drugs. Language
17 describing part three of the unfair and deceptive trade practices
18 claim has already been revised to reflect that ruling; the Court
19 will now sustain Abbott's second objection and revise part two of
20 this claim to conform the language to the Court's ruling and to
21 language on part three of the claim.

22 Abbott's third objection relates to the Court's omission of
23 Abbott's proposed instruction on detrimental reliance. As GSK
24 shows in its response, Abbott has previously made this argument
25 and the Court has already considered and rejected it. The Court
26 thus overrules Abbott's third objection, for the reasons
27 previously stated on the record, including the Court's November
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1 24, 2014 order denying Abbott's renewed motion for judgment as a
2 matter of law. Docket No. 591.

3 Final versions of the preliminary jury instructions, the
4 final jury instructions and the verdict form are attached to this
5 order.

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7 Dated: February 20, 2015



8 CLAUDIA WILKEN
9 United States District Judge

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